CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

Friday, November 3, 2000

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:10 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Bill Deaver, Kathleen Makel, Carol Scott and Gordana Swanson were present.

Item #1. Approval of the Minutes of the October 6, 2000, Commission Meeting.

The minutes of the October 6, 2000 Commission meeting were distributed to the Commission and made available to the public. Commissioner Swanson motioned that the minutes be approved. The motion was seconded by Commissioner Deaver. There being no objection, the minutes were approved as corrected.

Item #3. Pre-Adoption Discussion: Materiality Standards for Real Property Economic Interests--Regulations 18704.2 and 18705.2 (Conflicts Project, Phase 2, Project D).

Senior Commission Counsel John W. Wallace presented the proposed regulation, noting that the Commission previously approved an approach dealing with measuring materiality of financial effects on real property belonging to public officials. That approach, he explained, presumed materiality when real property was directly affected by a governmental decision, and nonmaterial if the effect was indirect.

Mr. Wallace explained that Decision point 1 proposed language pertaining to measuring direct financial effects on leasehold interests of public officials. Staff drafted the language following the same strategy used for ownership interests in real property, he noted, and tried to tie the standards directly to the unique aspects of leasehold interests. To do that, he added, staff used the factors in the existing "indirect test" and modified them slightly for the "direct effect" test. There has been no opposition to the proposed language, he said, and he recommended incorporating the language into the regulation for adoption in December.

There was no objection from the Commission.

Decision point 2, Mr. Wallace explained, concerned whether the Commission wanted to treat long-term leases differently than short-term leases. Staff presented options for standards for ownership interests and for leasehold interests in real property. He did not recommend the adoption of the language because staff did not believe it to be helpful.

There was no objection from the Commission.

Mr. Wallace explained that the language in Decision point 3 dealt with the indirect effects on real property owned by public officials, and incorporated the language the Commission chose at the October meeeting. He noted that the League of California Cities (LCC) requested deletion of subdivision (B) because it was subsumed under subdivision (A) in most cases.

Commissioner Swanson agreed with the LCC, and questioned whether subdivision (A) would be sufficient.

Mr. Wallace responded that subdivisions (B) and (C) include existing language, and that the examples are used to help the public understand when there may be a material financial effect on their property. The examples, he added, do not in themselves rebut the materiality presumption.

Mr. Wallace explained that this would apply when property subject to the governmental decision is more than 500 feet from the official's property.

Mike Martello, from the City of Mountain View and the LCC, agreed that subdivisions (A) and (C) provided guidance, and noted that (B) could provide guidance and is therefore acceptable.

Mr. Wallace explained that staff would be adding "The development potential or income producing potential of the property in which the official has an economic interest," to (A), as recommended in Mr. Martello's letter.

Commissioner Swanson suggested that staff include the word "examples" in the regulation to further clarify the regulation.

There was no objection from the Commission to accept staff's recommendation, keeping (B) and adding the language recommended in Mr. Martello's letter, as well as adding "substantial," as discussed at the last meeting.

Commissioner Makel suggested that the additional language proposed by Mr. Martello for (A) could also be added to (B).

Mr. Wallace suggested that (B) read, "The use of the property in which the official has an economic interest."

Commissioner Makel agreed.

Mr. Wallace presented Decision point 4, noting that staff modified existing indirect standards for leasholds, adding the "presumption" language, and recommended that it be retained for adoption in December.

Chairman Getman stated that the $250 rent amount seemed very low.

Mr. Wallace explained that he was not sure why it was originally set at that threshold, but noted that the rate paralleled the $250 threshold for personal financial effects. Since the thresholds are being doubled in another part of the Act, he suggested, this rate could also be increased.

Chairman Getman noted that it was inconsistent that the rent payments on a month-to-month basis are not considered income, but that this small amount of a leasehold payment could disqualify a public official from participating.

Commissioner Scott stated that the rate should not necessarily parallel the changes in the other thresholds, but should be higher because it does not fall into the same category.

Mr. Wallace responded that it is an indirect setting and does not need to be tied to the changes in the thresholds, and could be done as a percentage.

Assistant General Counsel Luisa Menchaca noted that a percentage could result in the rate being lower than $250.00, depending on the jurisdiction.

In response to a question, Mr. Wallace stated that §18705.2(b)(2)(A) would not be used often. He clarified that if there was a situation where an official was leasing a property, and the decision changed the allowable use of the property possibly resulting in a financial effect on the official, this regulation would be used.

Commissioner Swanson stated that she had no problem with the section if it was being put in as a safety measure.

There was no objection from the Commission to retaining the 5% rate, and deleting the $250 figure.

Mr. Wallace discussed the proposed regulation 18704.2(a)(5), noting that LCC suggested adding the term "substantially" to the "improved services" language. He explained that he had discussed this with Mr. Martello and that the LCC no longer wanted to pursue the additional language because the second sentence of the section resolved the LCC's concerns.

Mr. Martello noted that his group thought it would be necessary in order to point out that this was a major change, but that subsequent conversations with staff alleviated his concerns.

Mr. Wallace explained that staff opposed Mr. Martello's suggestion on page 2, item 3(b) of his letter because it seemed to complicate and narrow the application of the law. He noted that he discussed this with Mr. Martello and they agreed not to include the reworded language.

Chairman Getman clarified that the Commission would accept staff's recommendations on §18704.2 without the changes suggested by the LCC.

There was no objection from the Commission.

Ms. Wooldridge clarified that Decision point 1 is accepted as proposed, decision point 2 would not be accepted, decision point 3 would be accepted with the changes discussed, and Decision point 4 would be accepted with the changing of the phrase "$250 or" to "5%."

Chairman Getman agreed. There was no objection from the Commission.

Item #4. Update: Materiality Standards for Business Entities: Repeal and Re-enact Regulation 18705.1 (Conflicts Project, Phase 2, Project A).

Mr. Wallace explained that the memorandum was an update and that no action was requested on this item.

Item #5. Conflict of Interest Regulations ("Phase 2"): Projects I, J, and K ("Public Generally" Exception). Pre-adoption discussion of Amendments to Regulation 18707, Adoption of new Regulation 18707.1; Renumbering of Regulation 18707.1 to 18707.2 with Amendments, Renumbering of Regulation 18707.2 to 18707.3 with Amendments; Renumbering of Regulation 18707.3 to 18707.7 with Amendments, Adoption of Regulation 18707.9.

Ms. Menchaca presented the final decision points on Projects I, J, and K, beginning with an overview of the decision points. She explained that step 7 of the conflicts of interest analysis deal with the "public generally" exception, which is provided in §87103. She noted that the "public generally" exception exists because the risk of biased judgement is less when the financial effects of a decision fall broadly across a jurisdiction.

Ms. Menchaca stated that the Commission had tentatively approved proposed regulation 18707, which refers to other "special circumstances" regulations and outlines steps to determine the application of the "public generally" exception. New proposed regulation 18707.1, she explained, would be the "general purpose" regulation, dealing with "significant segment" and "substantially the same manner" elements of the regulation.

Ms. Menchaca summarized that the proposed regulation would provide that a "significant segment" exists when 10% of the population or 5,000 residents of the jurisdiction are affected if the economic interest which triggers the conflict is an individual, or if there is a personal financial effect on the official.

She explained that the general rule for conflicts triggered by real property would provide that a significant segment exists if 10% of the property owners or homeowners are affected, or if 5,000 property owners are affected.

Ms. Menchaca explained that the Commission would be discussing issues related to business entities, not-for-profit entities, and governmental entities. She noted that there is an existing 50% segment that applies to business entities, provided that more than a single industry, trade or profession is affected by the decision. Staff has recommended, she noted, a separate segment applicable to governmental entities when that governmental entity could conceivably be a source of income to an official and triggers disqualification. They have also proposed a separate segment, she added, dealing with not-for-profit entities which the current regulation does not address.

Ms. Menchaca stated that public comment relating to business entities and not-for-profit entities suggested that the two entities should be combined because they should be treated the same.

Decision point 1, option (a)(1), she explained, would continue to apply the "50% of the business entities" threshold, but would delete the "single industry, trade or profession" limitation. This would apply when the conflict was triggered by either a direct or indirect effect, and, Ms. Menchaca noted, staff did not recommend this option.

Ms. Menchaca explained that staff recommended option (b)(2) and option (a)(2), which would lower the current 50% threshold to 25%. This would be a compromise proposal, she noted, giving it flexibility in the application of the test.

This approach, Ms. Menchaca continued, would lower the 50% threshold to 25% and keep the "single industry, trade, or profession" limitation to ensure that a broad segment of the population is affected, and not just one particular group. She noted that "business climate issues" should deal with various industries, and that lowering the threshold would provide some relief to the regulated community.

As part of this approach, Ms. Menchaca recommended that the "50% test" be moved to the regulation that currently defines "predominant industry, trade or profession." Staff believed this to be reasonable, because the "special circumstances" regulation is applied almost uniquely in "company town" situations or when 100% of businesses are being impacted in a jurisdiction. A "50% test," she added, would provide a lot more flexibility in that regulation. If 50% of the businesses are not affected, she noted, the general rule could be applied, using a 25% business entity test and requiring that more than one industry be affected. Ms. Menchaca explained that this would apply when there is a direct or an indirect effect on the public official's economic interest.

Ms. Menchaca presented a third option, lowering the 50% threshold to 10% and deleting the "single industry, trade or profession" limitation. She explained that this proposal was presented by the California Association of Realtors and would apply when there is a direct or an indirect effect on the public official's economic interest.

Commissioner Makel questioned why the "significant segment" had to be heterogeneous.

Ms. Menchaca explained that FPPC Opinions have suggested that when there are diverse groups of people being affected by a decision, the risk of bias is lower.

Commissioner Deaver presented a hypothetical situation wherein a decision will have an effect on everyone in the community.

Ms. Menchaca discussed AB1838, noting that it required that the FPPC "minimize disqualification for indirect impacts where it is reasonably foreseeable that the economic impact of the decision will be distributed over a broad segment of the official's jurisdiction." She explained that the compromise staff proposal lowering the threshold to 25% and requiring that more than one single industry, trade or profession be affected would be consistent with the requirements in AB1838.

Stan Wieg, with the California Association of Realtors stated that the more relevent portion of the legislation would be Section 3, which asks the FPPC to clarify that one, or more than one, industry, trade, or profession is not necessarily disqualified from constituting a "significant segment." He explained that it was impossible for a realtor to take advantage of the special regulation because they would never have more than 50% of the businesses in the jurisdiction. The intent of the legislation sponsored by the Realtors was to broaden and get a more universally applicable regulation. His concern with the current proposal was that a 50% threshold was too high, and suggested a 10% threshold.

Commissioner Scott noted that the only industry segment that has come before the Commission is the Realtors. She stated that it bothered her to tailor a regulation for a particular group of individuals.

Mr. Wieg noted that there were a number of different industry groups that supported the legislation, but that those groups thought that the job was done with the legislation. He added that the Realtors are particularly sensitized to this issue because they are active in land related issues at the local level.

Commissioner Scott questioned whether that was the very reason that a particular group of people should not be addressed, because the conflicts are more likely to arise over and over with regard to Realtors.

Commissioner Deaver responded that people in the real estate industry and banking industry are more involved in growth and play a very positive role in a small community. He believed that the unique nature of these industries benefits everyone in the community, and that not approving this would be saying that those industries do not have the same rights as everyone else.

Commissioner Scott stated that it is because those industries are more active in the community that the FPPC should be especially careful to protect the community by requiring a scrupulous adherence to standards. She suggested that there could be a presumption that they could overcome.

Commissioner Makel did not agree that this regulation was being "tailor made" for anyone. She noted that the regulation will apply to everyone. She noted that the legislation required that the FPPC deal with the issue.

Commissioner Deaver stated that he did not think that realtors were the only ones getting an advantage on the issues they are involved in, but rather, that the whole community was getting an advantage.

Ms. Wooldridge commented that a majority of cases will affect more than one industry, and that the question revolved around whether the 10% proposed by the realtors or the 25% proposed by staff be accepted.

Chairman Getman stated that the staff proposal did not violate the legislation.

Mr. Wieg stated that the proposed regulation could "wiggle through" the legislative wording and not be in direct conflict. He stated that a 10% threshold would be the same threshold used for households and would be workable, but he did not agree that 25% of the businesses would work.

Chairman Getman noted that the 25% threshold would rarely apply to only one industry.

Mr. Wieg stated that whatever the Commission decides on this issue will be very relevant to whatever the Commission does in defining what is a material financial effect. The realtors believe very strongly, he stated, that if an issue affects 10% of the businesses in a community it has a substantial effect of the populace.

Chairman Getman noted that neither the Realtor's proposal nor the staff's proposal violates the legislation, and that the question is a policy decision.

Government Relations Director Mark Krausse agreed that both proposals do comply with the legislation.

Mr. Wieg agreed, noting that a decision on the percentages is arbitrary. He stated that this is not a Realtor issue, it is a business climate issue, and that there should be parity between the households and businesses.

Chairman Getman noted that to keep it a business climate issue, more than one business industry had to be involved.

Commissioner Deaver noted that there would still be cases where a Realtor would be disqualified.

Mr. Wieg agreed, but noted that this would solve a lot of the problem, as well as the perceived problem that a realtor cannot serve in local government.

Commissioner Makel stated that the previous regulation which combined the heterogeneous business issue with the 50% threshold would have violated the statute, but that she was satisfied that the proposals did not violate the statute.

Commissioner Scott stated that she agreed with the initial staff recommendation of a 50% threshold test.

Commissioner Swanson requested that staff present a worst possible scenario using the 10% threshold and the 25% threshold.

Ms. Menchaca responded that the 10% threshold should require that the "predominant industry, trade or profession" regulation be deleted, because it would never apply, and the opinions would be impacted.

Chairman Getman clarified the staff's concern that a 10% threshold would result in so many issues would fall under the "public generally" exception that anyone involved in a business decision would be excepted from the conflicts rules.

Ms. Menchaca agreed. She also noted that the retail trade exception could also be used.

Mr. Wieg stated that the 25% threshold is too high because if it is a good rule for individuals and households, it should be a good rule for businesses as well.

Commissioner Swanson stated that she welcomed Mr. Wieg's participation.

Ms. Wooldridge stated that there is comfort in consistency, but that she did not see any reasonable connection between businesses and households.

Mr. Wieg stated that it would be dramatically different in the larger cities.

Ms. Menchaca noted that the staff's recommendation included a numerical threshold which could be used in the larger cities.

Chairman Getman stated her concern that going from a 50% threshold to a 10% threshold was too extreme. She noted that the Commission was under a mandate to make the rules workable, and that going from a 50% threshold to a 25% threshold is a very big change. She suggested that the Commission try the 25% threshold and revisit the issue if it does not work.

Mr. Wieg stated that a smaller percentage is more workable in situations where there is an indirect effect.

Chairman Getman agreed, but noted that a 25% threshold is a lot less than the current threshold of 50%.

Mr. Wieg suggested that the larger the percentage the Commission chooses, the more important will be the discussion on foreseeability. He added that it will also be important to set up a rule or a standard allowing the public official to know that they have done enough to satisfactorily comply with the law.

Chairman Getman agreed.

Mr. Martello commented that he did not know what the right percentage would be, but noted that the biggest limiting factor is that it is within the jurisdiction. He stated that a 10% threshold within a jurisdiction seemed to be a pretty small number, but affected a lot more people. He agreed that the 50% threshold was too high, but questioned whether 25% would make enough of a difference. Mr. Martello pointed out that realtors are the most conspicuous industry.

Tom Willis, representing San Francisco Realtors Association, did not support the 25% threshold. He noted that it is very difficult to figure out what 25% of an indirect effect on businesses would be, and suggested that attorneys will be using a 30%-35% calculation because it is so difficult to be accurate. He suggested that the Commission accept the 10% threshold.

In response to a question, Ms. Menchaca explained that "substantially the same manner" is determined on a case-by-case basis, and means that the financial effects are closely similar.

Mr. Wieg noted that public officials tend to err on the side of disqualification and recusal. He explained that the interpretation of "substantially the same" could mean that, even though 50% of businesses are affected, only 10% might be affected in substantially the same manner.

Chairman Getman discussed the parallel nature of a "10%" rule, noting that she did not think it applied. She explained her concern that since there are always fewer businesses than people, the 10%, in the business context, is a percentage of a much smaller universe.

Mr. Wieg agreed that it is a small universe, but argued that if 10 out of 100 are affected, it is like striking 25 out of the populace. He added that businesses are people and they are multiple people in the sense that there is less of them than there are people. To get to a significant segment of that population, he stated, not as many should have to be affected.

Chairman Getman responded that the community is small, and that consideration should be given to the nature of the community.

Mr. Wieg clarified that he was discussing the societal community, not the business community itself. He explained that if there are only 250 businesses in a community, and 25 of those businesses are affected by a regulation, then that should be considered a significant effect in that community. He noted that if 25 households were affected, it

would not be a significant affect because there might be many more households. He argued that the number and percentage for businesses be at least as small as households.

Commissioner Makel pointed out that Mr. Wieg was making a mathematical argument. She noted that, as the universe gets smaller and there are only a few people who will be included in the test, it gets very uncomfortable because it looks more like a conflict unique to that person.

Mr. Wieg pointed out that if it was taken to extremes that situation could exist. He agreed that it would not be a good idea if there are only two businesses in town, but that it might be a good idea if there were 200 businesses in town. He stated that the Commission might want to make a relatively easy threshold for the local officials to meet, thus encouraging participation in discussions.

Commissioner Makel questioned how often this issue would even arise.

Chairman Getman responded that the Commission will not know that until after they have tried it.

Chairman Getman clarified that the staff recommendation included input by Enforcement Division staff.

Commissioner Makel motioned that the Commission accept staff's recommendation on Decision point 1.

Commissioner Deaver seconded the motion.

There was no objection from the Commission.

Chairman Getman noted that if, after a year or two of applying the new rule, it is determined that the rule does not do what the Commission intended it to do, and it results in the disqualification of just as many people, the Commission should revisit the issue. She stated that the Commission's intent is to enable the exception to work. She added that if the regulation creates a large, unintended loophole, the issue should be revisited.

Commissioner Makel agreed.

Decision 2, Ms. Menchaca explained, deals with the same issue, and includes a recommendation made by the California Association of Realtors to include a numerical test of 5,000 businesses in the jurisdiction or district affected. She noted that staff made no recommendation on this issue, but included it in the options. She explained that this would be an issue in 5 or 6 of the larger cities.

Ms. Menchaca clarified that staff had not collected enough meaningful data to know what the impacts would be.

Chairman Getman stated her concern that 5,000 businesses might be too large a number.

Commissioner Scott motioned that the Commission not add the new numerical test.

Mr. Wieg stated that he formulated that if 5,000 people were enough to qualify, then 5,000 businesses would be enough. He stated that if he had proposed a numerical threshold independent of a percentage threshold, he probably would have recommended 1,000 businesses as the numerical threshold.

Commissioner Deaver pointed out that cities face two kinds of decisions: Decisions involving building a major project; and decisions about small projects, which affect more than just the realtors, but not 5,000 businesses. He agreed that the 5,000 number seemed high.

Chairman Getman stated that 1,000 businesses being affected in substantially the same manner should be considered a significant segment.

Commissioner Scott pointed out that if a Staples center was being build, it could conceivably affect 1,000 businesses very easily.

Commissioner Deaver agreed, but noted that those projects happen once in every 5 or 10 years. He stated that there are a lot of smaller projects that are important to local government.

Commissioner Scott noted that it would depend on the size of the jurisdiction.

Mr. Wieg noted that this is designed to be an indicator that there is a community-wide event, and would allow participation by public officials because it affects so many people and businesses.

Ms. Menchaca pointed out that Decision 3 deals with combining business entities with non-profits which the Commission might want to consider in deciding this numerical threshold.

Commissioner Deaver noted that "non-profits" do make money, whether it is a profit or not.

Commissioner Makel stated that she had the same concern.

Commissioner Scott stated that the misnomer is the tax-exempt status. She agreed that they were very close to a regular business, fostering the interest of an industry.

Chairman Getman stated that 1,000 would do nothing in a small jurisdiction, but the 25% would work. It would be applicable, she noted, in larger jurisdictions.

Ms. Wooldridge suggested that 1,000 seemed like a reasonable number.

Commissioner Deaver motioned that the Commission accept 1,000 as the business entities threshold.

Commissioner Makel seconded the motion.

Commissioner Scott withdrew her earlier motion. She stated that both numbers were arbitrary, but that she preferred the 5,000 threshold because she preferred to err on the side of protecting the public.

Commissioner Swanson stated that she thought 1,000 was too low and that 5,000 was too high. She suggested 2,000.

Commissioner Deaver amended his motion to accept 2,000 as the business entity threshold.

Commissioner Scott voted "no" on the motion. Commissioners Deaver, Makel, Swanson and Chairman Getman voted "aye." The motion carried by a 4-1 vote.

Chairman Getman commented that the Commission should revisit this issue in a year or two to see how it is working.

Decision 3, Ms. Menchaca explained, asked the Commission whether to include a "significant segment" subdivision for not-for-profit entities, or whether they would want to combine those entities with the business entities segment. She stated that if the Commission wanted a separate subdivision, staff recommended that the Commission use the same numerical and percentage tests as the business entities.

Commissioner Deaver stated that a separate subdivision would not be necessary.

There was no objection from the Commission to combining the not-for-profits with the business entities as recommended by staff.

Ms. Wooldridge clarified that this would apply to all non-profit entities.

Decision 4, Ms. Menchaca pointed out, was being presented to the Commission to make sure that the Commission was aware that there was a previously proposed regulation to deal with "business climate issues." She added that staff felt that if decisions 1-3 did not satisfy the concerns of the Commission, then staff should do more work on it.

Chairman Getman clarified that this proposal was initiated by the California Association of Realtors.

Mr. Wieg stated that the previous decisions built a "business climate" criteria into the general rule, and therefore he saw no need for this rule.

Chairman Getman adjourned the meeting for a break at 10:41 a.m.

The meeting reconvened at 11:00 a.m. Commissioner Scott was not present.

Ms. Menchaca clarified that there was no decision to be made on governmental entities, noting that it had already been discussed and that it would be maintained as a separate segment.

Decision 5, Ms. Menchaca explained, presented options which would move the *Ferraro* "bright line" concept to proposed regulation 18707.9(a), for purposes of clarity, or keep it in the proposed regulation 18707.1. She noted that the Commission needed to decide whether to keep it in the general rule, or move it to the "rent control" regulation. This would not be a substantive change, she added, because people would go directly to that regulation to see if it works for them. She reported that staff had no objection to the move.

There was no objection from the Commission to the move.

Commissioner Scott returned to the meeting at 11:04.

Ms. Menchaca explained that proposed regulation 18707.9 is a regulation that applies to certain types of decisions when the "general rule" does not work. She presented examples, noting that the proposal might allow some owners of residential units to participate in a governmental decision even though the general rule would not have allowed the participation. She noted that the proposed regulation would consider the public official's ownership and the conflicts that would be triggered by those ownerships, and they could be analyzed under one rule. The current rule, she said, would require analyzing the real property exception and then the business entity exception.

Ms. Menchaca noted that the proposed regulation is limited to certain types of decisions; applies when 10% of the properties are affected by the decision; defines "substantially the same" to mean that when the impact is proportional the public official can participate; and is a more flexible rule.

Ms. Menchaca discussed staff's proposal, to include in subdivision (b) a limitation to ensure that when other ownership interests are present, this "public generally" exception cannot be used. She noted that Mr. Willis had made clarifying suggestions that staff recommends be included in the rule, including changing all references to "real property" to "real property units."

Ms. Menchaca explained that staff had received strong support and strong opposition from the public to this regulation, and that there continues to be a lot of interest in the regulation.

Chairman Getman reiterated her concern that persons who own 4 rental units notl be treated the same as persons who own 100 rental units, but otherwise, she liked factor two.

Chairman Getman explained that the issue arose because of input from landlords who only own a couple of units, and she agreed that their interest is not that different from someone who pays the rent.

Commissioner Deaver suggested that it could be revisited later to see if it created any problems.

There was no objection from the Commission to factor two.

Item #6. Pre-Adoption Discussion: Manner of Disqualification (Conflicts Project, Phase 2, Project M); Legally Required Participation (Conflicts Project, Phase 2, Project Q).

Staff Counsel Scott Tocher presented Project M, explaining that it addresses two regulations: 18702.1, concerning what happens to a public official who has a disqualifying interest; and 18730, governing the disclosure of the disqualifying interest.

Mr. Tocher explained that the proposal included language which incorporated the Commission's previous decisions regarding this project, and noted that staff has proposed three additional changes.

Chairman Getman noted that the proposed changes were small, technical changes.

There was no objection from the Commission regarding those changes.

Mr. Tocher then presented Project Q, addressing regulation 18708, which concerns "legally required participation." He presented the Commission with two new draft proposals of the regulation, incorporating recent suggestions from Mike Martello for the League of California Cities, and Tony Alperin, of the Los Angeles City Attorney's Office.

Commissioner Scott questioned whether the regulation would be enforceable, noting that the language proposed by Mr. Alperin states that if there is not compliance it would not affect the governmental decision.

Mr. Tocher stated that staff did not recommend adopting that language.

Chairman Getman clarified that staff's language relates to the mandatory disclosures that are required when a public official is allowed to participate, despite a conflict, because the participation is legally required. She noted that, in the *Kunec* decision, the Court said that the disclosures were not specific enough, and that these proposed regulations would require that those disclosures be more specific.

Decision 1, Mr. Tocher explained, presents an option previously favored by the Commission that would tie the disclosure of the nature of the economic interest to the specificity contained in a Statement of Economic Interest. After further review, Mr.

Tocher explained, staff recognized potential problems with using that as the standard, and therefore developed another option for the Commission to consider.

The second option, Mr. Tocher stated, is an improvement because it describes for the public official what needs to be done, without reference to a form or schedule that the public official may not have at the time of the discussion. There also are certain situations where the specificity of the disclosure in an SEI does not make sense in the disclosure that would take place before a decision. Staff recommended that the language of option 2 be chosen for subparagraph (b)(1).

Mr. Tocher explained that the issue of disclosure by a public official who is not at a public meeting at the time the discussion takes place is addressed in subdivision 4.

There was no objection from the Commission to accepting option 2.

Commissioner Scott left the meeting at 11:07 a.m.

Mr. Tocher then presented suggested changes in the language for subparagraph (b)(2). Mr. Tocher was proposing the changes in accordance with the suggestions made by Mr. Martello. He noted that the previous language was not clear enough to indicate that there is a difference between subdivision (b)(1) and subdivision (b)(2).

Commissioner Scott returned to the meeting at 11:13.

Chairman Getman clarified that it also addressed Commissioner Scott's concerns that the actual conflict should be described, not just the financial interest.

Mr. Tocher stated that staff was recommending the new language.

Commissioner Scott suggested that the wording be,"circumstances under which he believes and the basis for the belief that a conflict of interest exists." In this way, she explained, the public official would present the potential conflict, the circumstances under which it would arise, and the reason that the public official has a potential conflict.

Mr. Tocher explained that the new language in step 2 would provide for an explanation of the circumstances under which the public official believes the conflict arises.

Commissioner Deaver stated that Mr. Tocher's original language looked clear.

Ms. Wooldridge proposed, "a description of the circumstances under which he believes or basis for the belief that a conflict may arise."

Commissioner Scott agreed with that wording, and noted that she was just looking for a nexus. She added that, without the additional wording, a public official could state that he owned a home in the district and it would satisfy the criteria without explaining why it was a conflict.

Chairman Getman stated that the disclosure in Commissioner Scott's example would only satisfy subparagraph (b)(1), and that subparagraph (b)(2) requires the additional information.

Commissioner Scott agreed that Mr. Tocher's proposed language would work.

There was no objection from the Commission to accept Mr. Tocher's proposed language with the addition of the words, "or she."

Decision 2, Mr. Tocher explained, proposes a restatement of subdivision (b)(4), reorganizing that section. It would require that subsection (A) be applied for an open meeting, (B) be applied for a closed session meeting, and (C) be applied when it is not a public meeting. He noted that he changed Mr. Alperin's suggestions in section (B), deleting the last sentence, and adding a repeat of the last sentence in (A).

Chairman Getman questioned whether the written disclosure of a conflict in a closed session meeting would be kept confidential.

Commissioner Scott stated that the agency would need to seek advice from their counsel, noting that the conflict would have to be disclosed or the purpose of the regulation would be undermined. She asked how the public would be served if they do not know that there is a conflict.

Commissioner Deaver explained that the only reasons something can be kept confidential in a closed session are discussions regarding personnel, litigation and negotiations to purchase property. He noted that the agency would not want to inadvertently let the public know personal information about personnel.

Mr. Martello explained that, currently, the public official with the conflict does not participate, and that it is noted in the record of the city clerk's minutes that the councilmember did not participate because of a potential conflict of interest. He believed that disclosure could be accomplished without revealing the confidence of the closed session, and provided an example of a disclosure.

Commissioner Scott stated that she would be concerned about potential misuse of the disclosure from someone who does not want his or her conflict disclosed, and that errors should be made on the side of disclosing the nature of a conflict.

Mr. Martello suggested wording to clarify the language allowing limited disclosure if the agency counsel believes that public disclosure of the conflict would disclose a confidence of a subject of the closed session, until the litigation or other subject is concluded.

Commissioner Scott stated that the language should assure that there would not be a conflict which could bring about a lawsuit.

Mr. Tocher stated that the situation described by Mr. Martello was consistent with the language of subdivision (b). He stated that a public official would not be exempted from having to comply with the disclosure requirements simply because the discussion would be in closed session.

Chairman Getman suggested that the language could be kept, but that a comment could be included, stating that the disclosure can be made in a way that does not cause the agency to reveal the confidence of the closed session.

Commissioner Scott suggested that if a comment is used, an example be provided.

Mr. Martello noted that most closed sessions involving a lawsuit, the lawsuit itself is part of the public record. There are circumstances, under the Brown Act, where the entity being sued does not have to be disclosed, he added, in order to keep confidential litigation strategies.

Commissioner Scott suggested that an example would be helpful to let public officials know that disclosure would be made public later.

Mr. Tocher clarified that the Commission wanted a comment stating that there is no intention to cause the agency to reveal the confidences contemplated by law of the closed session, and that there needs to be an amendment of the record after the item is no longer subject to confidentiality.

Commissioner Scott suggested that the amendment of the record could be included in the language, and an example could be provided. In this way, she added, the examples would show the public how to comply without telling the public how they have to comply.

Mr. Tocher observed that the suggestion provided by Commissioner Scott would be a two-step disclosure process. One disclosure must be in the public record, he explained, being as revealing as required by the statute but not so revealing that it discloses too much. The second step would be an amendment of the record, he added.

Commissioner Swanson stated that it would be ambiguous to follow Commissioner Scott's suggestion.

Ms. Wooldridge stated that it becomes more difficult if the issue is a financial interest in the income of an employee whose terms of employment are being discussed and disclosure is legally required. She stated that the interests of the employee must be considered and that it would be difficult to make the information public.

Commissioner Scott observed that Ms. Wooldridge's example would make a much stronger exception to the disclosure rule.

Chairman Getman asked whether the language in Section B requiring that the information contained in the disclosure be made part of the official public record, contemplated a public document in the public minutes or the closed session minutes which are not public.

Commissioner Deaver noted that if was intended to be kept confidential under the Brown Act, then it would be kept confidential.

Mr. Tocher responded that it would be a public document in the public minutes.

Mr. Martello noted that very few local agencies have minutes of closed sessions. He stated that it should be part of the public record because the newspapers will print the litigation story, and the public official's SEI will indicate a conflict, so the public should know what the public official did for the protection of the public official.

Chairman Getman noted that if the disclosure will be in the public minutes, it would not require two disclosures, and suggested that the language be specific enough to satisfy the statute, but not reveal the confidence the agency is entitled to by law.

Mr. Tocher summarized that he would provide the Commission language for a comment without an example.

Commissioner Scott stated that she would like some examples in the comments.

Chairman Getman suggested that Mr. Tocher draft one comment with an example and one comment without an example for the Commission's consideration in December 2000.

Commissioner Scott noted that, even though the proposal is consistent with filing requirements, it is very difficult to determine where a public official should file. She suggested that an easy process for gathering the information be developed.

Commissioner Deaver asked if it could be filed with the minutes.

Mr. Tocher explained that there are certain circumstances when there would not be minutes.

Commissioner Deaver suggested that the disclosures be filed with the regular minutes of the regular meeting.

Commissioner Scott noted that there is always some form of documentation for agency business, and that the disclosures could be kept with the documentation.

Commissioner Makel noted that this addresses situations involving negotiations.

Chairman Getman stated that there is a place where this is done already in other circumstances.

Commissioner Scott suggested that the agency making the decision should keep the documentation.

Mr. Tocher explained that the origins of the language comes from existing regulation 18944.2.

Commissioner Makel stated that it would be very confusing to have the documents go to different agencies, and supported putting the document with the SEI.

Ms. Wooldridge explained that staff had chosen that location because they preferred to err on a spot that seemed obvious.

Commissioner Scott stated that she was concerned that they would get lost.

Chairman Getman noted that, without minutes, the first place people will look to learn whether there is a conflict is the SEI. People often call the FPPC, she added, to find out where they can look for this information, and are directed to the SEI.

Commissioner Deaver asked whether there were a lot of government decisions made outside of meetings.

Chairman Getman responded that negotiations are often conducted outside of meetings.

Commissioner Deaver noted that labor negotiations for a school board are finalized at an open session of the school board.

Commissioner Scott explained that she was more concerned about committees for contracts or variances.

Chairman Getman noted that situations covered under section (C) would not occur often, but that one had already occurred.

Commissioner Deaver questioned whether those negotiations are eventually ratified by the local agency.

Mr. Martello stated that he could only think of very limited circumstances where a situation like Oakland Mayor Jerry Brown's would occur, because this proposal would not apply to public officials, other than council members. However, he could see negotiations outside of a council meeting if, for instance, a city council authorized a city manager to sign a lease and development agreement on a building. He stated that a staff person with a conflict would be disqualified from participating.

Chairman Getman clarified that Mayor Brown was willing to disclose, but there was no regulation providing a manner for disclosing a conflict.

Mr. Tocher proposed that the writing be filed within 30 days after the meeting.

Commissioner Deaver suggested that disclosure be filed within 24 hours.

Mr. Tocher clarified that the oral disclosure is done during the meeting. The information contained in that disclosure that must be written in the minutes is often not available until a month later, because local agencies often meet only once a month.

There was no objection from the Commission to the 30-day written documentation.

Chairman Getman clarified that paragraph 4 would be substituted with the draft presented at the meeting by Mr. Tocher; would include a 30-day time frame for the written documentation; and would include a comment addressing whether the written disclosure required under subparagraph (4)(b) is not to be construed as compromising the confidentiality otherwise covered by some other law under which they are operating.

Chairman Getman explained that "quorum" has different meanings, and that there are a number of decisions where a city has to have a "supermajority" to make a decision. The current proposal would allow an official to participate if a quorum is needed, but not for a "supermajority."

Mr. Tocher stated that staff was comfortable with the language proposed by the League of California Cities.

There was no objection from the Commission.

Mr. Martello stated that if staff found a better location for that issue in the regulations, he would not object to moving it.

Mr. Martello noted that Mr. Alperin had also recommended language in item (2) of his draft that Mr. Martello disagreed with because disclosure needed to be made right away. He agreed with Mr. Alperin's language in item (3) of his draft because it dealt with the *Kunec* decision. He explained that if a public official was not supposed to participate because it was not legally required, then there is a problem with the decision, and it is an improper decision. However, if the participation is legal, but the official does not properly disclose the conflict, Mr. Martello did not believe that it should be grounds for invalidating the action.

Commissioner Scott questioned how the regulation would be enforced if this was not used.

Mr. Martello responded that invalidating the decision would be too severe, and that another type of penalty should be considered.

Ms. Menchaca pointed out that provision 91003 in the statute allows an official action to be set aside as void. She was concerned that the Commission should not analyze the

merits of this issue because it would be outside the scope of the notice and because staff would need time to analyze the issue.

Chairman Getman stated that she shared Ms. Menchaca's concern that it has not been discussed or studied, and suggested that the Commission address the issue later.

Ms. Menchaca clarified that the Commission may not even have the authority to consider a regulation of this type. She understood why Mr. Martello wanted to get regulatory language interpreting *Kunec*, but thought that was different from what Enforcement regulations provide and might inadvertently change Enforcement regulations.

Mr. Tocher noted that, ultimately, a court of law will determine a remedy for the *Kunec* situation.

Chairman Getman suggested that it be approved without that paragraph, but add it to the regulatory calendar for next year.

Ms. Wooldridge stated that the way the language reads it creates perverse incentives because there is no incentive for the agency to make sure that decision-makers are complying with their PRA obligations. She added that she would have less trouble with it if there were more of a "substantial compliance" type of language, providing that if the agency substantially complied with the disclosure requirements, the validity of the governmental decision should not be in question.

Commissioner Scott agreed with Ms. Wooldridge's suggestion.

Chairman Getman directed staff to do a formal notice on this issue, bringing it back to the Commission in the time frame that is appropriate, giving staff time to study the issue. Mr. Tocher clarified that, with the exception of Mr. Alperin's draft item (2), staff would move forward with this project.

There was no objection from the Commission.

Item #2. Public Comment.

Chairman Getman stated that the Commission would be meeting in closed session during the break to discuss both personnel matters and the Court of Appeal decision in the *Jerry Brown* case. She noted that a member of the public requested that she be allowed to make a statement on the closed session matters, and that the Commission would hear her statement but could not engage in a dialogue on this issue.

Charlotte Hamann, resident of the City of Oakland, stated that the situation that exists in the *Jerry Brown* case is not unique. She believed that, as a result of the Commission's regulations and opinions, the Court of Appeals has reached a decision in three cases that seems to be completely contrary to the purpose of the PRA. She stated that this issue addressed the big problem of corruption in government.

Ms. Hamann stated that she believed that Jerry Brown was elected because the people of Oakland perceived that there was a great deal of corruption at all levels of Oakland government.

Ms. Hamann stated that she had studied the District Court of Appeal's Opinion, the FPPC briefs for that Opinion, briefs of the *Feinstein* case, and agreed with the argument made in Robert DuVries' briefs to the Court of Appeals. Those briefs, she noted, state that the regulations and opinions that date back to the first Commissioner of the FPPC are contrary to the Political Reform Act. She suggested that the Commission could explore the intent of the voters when the PRA was passed in 1974 by referring to the sample ballot for that election.

Chairman Getman stated that the Commission could get a copy of that sample ballot for Ms. Hamann from the Secretary of State's office.

Ms. Hamann explained that the first commissioner of the FPPC wrongly reasoned that the voters intended to codify prior case law when they approved the Political Reform Act. She believed that the voters passed the PRA because they did not believe that the prior case law was adequate. She hoped to persuade the Commission to study the earlier decisions and regulations of the Commission, and to present an argument to the California Supreme Court that would consider the original intent of the voters.

Ms. Hamann stated that the early opinions of the Commission were contrary to the terms of the statute and that she believed that the California Supreme Court would uphold that argument. She noted that it would be difficult for the Commission present this argument because the Commission has relied on those opinions for 22 years, but argued that even the Court of Appeal interpreted the opinions and regulations, those interpretations were not consistent with the statute. She stated that the *Brown, Kunec, and Feinstein* decisions dealt with the disclosure rule, and that those opinions have been incorporated into California case law and leave California without an enforcement statute.

Ms. Hamann urged the Commission to request *de novo* review from the California Supreme Court to determine whether the results of the regulations are completely contrary to the clear terms of the statute. The advantage to this, she stated, would be that it takes the consideration of the city charter out of the issue. Ms. Hamann stated that a decision by the California Supreme Court upholding this case would give voters the option to develop another initiative to clarify this issue.

Ms. Hamann explained that government entities should develop their own alternate decision-making processes. She suggested that the Commission could help government entities develop those processes.

Ms. Hamann clarified that the Commission's opinions and regulations make the statute unenforceable. She noted that prior decisions by the Commission, dating back to 1978,

undermined the enforceability of the PRA. She suggested that Commissioners compare the common law rule of necessity with the statute to see that they are not consistent.

The Commission recessed to closed session at 12:20 p.m. to consider the following matters:

Item #22. Pending Litigation (Gov't. Code §§ 11126 (e)(1), 11126 (e)(2)(C).) .

a. ***Jerry Brown v. Fair Political Practices Commission.***

b. ***California ProLife Council v. Karen Getman et al.***

Item #23. Discussion of Personnel. (Gov.Code § 11126(a)(1).).

Chairman Getman reconvened the meeting in open session at 1:45 p.m.

Chairman Getman announced that a decision had been reached during closed session on Item #22(a), *Jerry Brown v. Fair Political Practices Commission*. She stated that the Commission had considered the 1st District Court of Appeals ruling that Mayor Jerry Brown may participate in redevelopment decisions despite his financial conflict of interest, and had decided not to seek further review of that ruling. She cited the narrow reach of the court of appeals ruling, the small liklihood that the Supreme Court would reverse the ruling, and the added expense and burden that the continued litigation would impose on the FPPC and the City of Oakland as reasons for the decision.

Chairman Getman stated that the Commission's first duty is to fairly and firmly interpret the PRA, and to carry out its purpose of ensuring that public officials perform their duties free from bias caused by their own financial interest. She noted that those obligations had been fulfilled and vigorously defended in court and that the public's interest would be best served by allowing this litigation to end.

Chairman Getman explained that, as mandated by the Court of Appeal, the FPPC has withdrawn its March 3, 2000 opinion in this matter.

Item #7. Pre-Adoption Discussion: Clarifying the Meaning of "Doing Business in the Jurisdiction" - Proposed Regulation 18230 (Conflicts project, Phase 2, Project N).

Staff Counsel Natalie Bocanegra presented Project N, noting that the objective of this project was to clarify the phrase "Doing business in the jurisdiction" as it is used in Government Code §§ 82030, 82034, and 87209. She explained that those statutes define income, investment and business positions, respectively. She explained that draft language in Versions B, reflecting language presented at the June Commission meeting, was presented for informational purposes.

Ms. Bocanegra stated that Version A codified the Commission opinion *In re Baty* and subsequent advice letters, except the *Sixt* advice letter dealing with marketing. The proposed language of Version A, she explained, defines "doing business in the jurisdiction" as "having business contacts on a regular or substantial basis with a jurisdiction of a public official."

Decision 1, Ms. Bocanegra explained, asks whether business contacts be limited to those with "a person who maintains a physical presence in" the jurisdiction. She noted that the phrase creates an objective criterion that public officials can rely on, and added that its inclusion would not change any past advice. She added that it could have an impact on future FPPC advice because the proposed language adds a requirement that the person maintains a physical presence in the jurisdiction.

Ms. Bocanegra stated that one of the purposes of defining this phrase was to provide an easily understandable and objective criteria for public officials and that the proposed language would provide that, even though it might not cover every situation.

There was no objection from the Commission to including the "physical presence" requirement.

Ms. Bocanegra stated that **Decision 2** asked the Commission whether "marketing" should be included with the other constituting "business contacts." Staff recommended including "marketing" for statutory construction reasons. She explained that a previous advice letter expanded the term "doing business in the jurisdiction" to include marketing through radio, television and the internet. Subsequently, she noted, the Commission decided that an expansion of the term required regulatory review.

Ms. Bocanegra explained that the fundamental purpose of marketing is to promote future business. She noted that, while the *Baty* opinion did not address activities related to prospective business contacts, Sections 82030, 82034, and 87209 contain language that defines income, investments and business positions and contemplate prospective activities.

Ms. Bocanegra suggested that the Commission might wish to exclude the term "marketing" if it determines that including the phrase would make the regulation too complex to be easily understood and applied by the regulated community. She urged the Commission to weigh the statutory construction of the the Act; the workability of the proposal; and privacy considerations when making this decision.

Chairman Getman agreed that marketing can be a sign that a person intends to do business in a jurisdiction, but noted that every internet site would then constitute a reportable source under option "a". She pointed out that every internet site is visible from a public official's jurisdiction, and that a business cannot target marketing toward a jurisdiction in which it is actually doing business. She preferred option "b" because it would include marketing or advertising, but only if there is some other indicia that the company actually has business contacts in the jurisdiction.

Commissioner Deaver agreed with Chairman Getman's concern.

Ms. Bocanegra explained that the Commission did not have to address the issue of "marketing" if it did not wish to include marketing in the definition. She noted that both options "a" and "b" could be rejected.

Chairman Getman stated that rejecting both versions would leave the decision up to staff's interpretation of marketing and business contacts.

Commissioner Swanson stated that the issue has far-reaching applications and was concerned about the proposal's effect on non-profits. She noted that the proposal may include too much and suggested that each case be judged on its own merits.

Chairman Getman noted that the problem arose because it was not defined and staff had to define it in advice letters, resulting in a very broad definition. She suggested that the Commission find a narrower definition that would not leave marketing and advertising up to staff discretion.

Chairman Getman stated that the Commission could eliminate "marketing" from the definition, or include "marketing" only when there are other identifiable business contacts with the official's jurisdiction. She recommended that the Commission include the "marketing" option, and that it require that the business both market and transact business within the jurisdiction.

Commissioner Swanson was bothered by the idea of marketing being included in the definition.

Chairman Getman proposed that the language read, ". . . with a person who maintains a physical presence in (or within) the jurisdiction of a public official. "Business contacts" include, but are not limited to, manufacturing, distributing, selling, purchasing, or providing services or goods."

There was no objection from the Commission.

Scott Hallabrin, from the Assembly Ethics Committee, noted that the statute refers to "planning to do business," and questioned how that would work with the definition.

Ms. Bocanegra responded that staff has construed "doing business in the jurisdiction" and "planning to do business in the jurisdiction" as two separate types of activities. She explained that if "marketing" was included as a business contact, planning to do marketing would constitute "planning to do business" in the jurisdiction.

Mr. Hallabrin suggested that the Commission include language that would clarify "planning to do business."

Ms. Bocanegra noted that marketing could be evidence that someone is planning to do business. She suggested that if it is not going to be included under "doing business in the jurisdiction," it should not be included in "planning to do business in the jurisdiction." If "marketing" is excluded, she explained, then "marketing" would not be conclusive evidence that a person is doing business, but might be evidence that a person is planning to do business. She also pointed out that there would need to be facts showing that the business is targeting the jurisdiction.

Ms. Menchaca pointed out that if a business was planning to do more marketing it would not be covered.

Ben Davidian, from Bell, McAndrews, Hiltachk, Davidian, questioned whether this would eliminate internet sites. He suggested that if the internet was included with the concept of marketing, and marketing was deleted, it would eliminate that problem. He stated that most companies have web sites, but are not necessarily targeting California.

Commissioner Deaver noted that if a business has a web site, then they are marketing to the world.

Commissioner Makel pointed out that the Commission had agreed to delete marketing.

Chairman Getman presented an example of a bagel shop in New York that does not target California markets. She questioned whether, in her example, a person who owns stock in the company and requested that bagels be sent to her home in California, would have to consider the company as one that is "doing business in the jurisdiction."

Ms. Bocanegra responded that they would not if they are only sending bagels to the one person because the business would have to be done on a regular or substantial basis to be considered "doing business in the jurisdiction."

Chairman Getman questioned whether she would have a responsibility to find out whether their business had changed if she learned that the business now had a web site.

Ms. Bocanegra responded that she would not have to do that because the Commission decided to exclude "marketing" from the definition.

Mr. Davidian pointed out that a company like Amazon.com should have to be included as "doing business in the jurisdiction," but that just because a business has a web site it should not be considered enough, by itself, to be considered "doing business in the jurisdiction."

Chairman Getman clarified that the Commission had agreed that "doing business in the jurisdiction" could not be concluded by simply having a web site. She noted that there would have to be substantial and regular business contacts and a physical presence.

Ms. Bocanegra responded that the Commission would have to expressly say that business contacts do not include marketing via the internet in order to accomplish Chairman Getman's suggestion.

Ms. Wooldridge noted that there is a substantial amount of business that is done by marketing on the internet. If the Commission excludes "marketing," she noted, it would exclude a great deal of business.

Commissioner Makel made a motion to accept option b.

Mr. Davidian asked whether a person, who is located in the jurisdiction, and purchases goods from the entity that has the internet site, has triggered "doing business in the jurisdiction."

Chairman Getman explained that it would not, because it would need to be regular and substantial business in addition to the purchaser maintaining a physical presence, in order to trigger "doing business in the jurisdiction."

Ms. Bocanegra noted that the Commission also needed to decide whether to include "advertising" in the definition.

The Commission did not support including "advertising."

Chairman Getman clarified that the intent of the Commission was that internet advertising alone was not enough to trigger "doing business in the jurisdiction," but that if a company does business on a regular and substantial basis in the jurisdiction it would be enough to trigger "doing business in the jurisdiction." She suggested that including the language in Decision 2 could be done as long as it does not conflict with the intent of the Commission. She clarified that staff should examine whether the phrase "without other identifiable business contacts" can be deleted from the language without changing the intent of the Commission.

Ms. Bocanegra stated that the Commission would not need to consider Decision 3 since it had decided not to include "marketing" in the definition of "doing business in the jurisdiction."

Item #8. Pre-Adoption Discussion: Definition of Public Official - Amendments to Regulation 18701 (Conflicts Project, Phase 2, Projects O and P).

Staff Counsel Julia Bilaver presented a proposed amendment to the definition of "consultant." She noted that the current definition can be to exclude independent contractors who perform new duties in an agency that no employees in an agency currently perform, but who participate in making important governmental decisions for an extended period of time.

Ms. Bilaver stated that the current rule can also be interpreted to exclude those who perform duties that are ordinarily performed by an employee who should be designated in the conflict of interest code but is not. She explained that staff has interpreted the existing regulation to mean that, if those duties were performed by an employee who should be designated, then they will be considered to be consultants if they in a staff capacity. She clarified that this means that they would be providing these duties for an extended period of time.

Ms. Bilaver explained that the proposed language was included in the regulation to make it clearer. She suggested that Regulation 18701 include a provision that, to be a consultant, an independent contractor must serve in a staff capacity and participate in making a governmental decision as defined in Regulation 18702.2. She explained that under Regulation 18702.2, an individual "participates in making a governmental decision" when they negotiate or make recommendations without significant substantive review regarding one of seven governmental decisions.

Commissioner Swanson questioned why the language had to be in two different sections of the regulations.

Ms. Bilaver explained that various regulations were included in one regulation at one point, but that Phase 1 introduced the eight-step process, and it was determined at that time to separate the old regulation into different regulations.

The Commission approved the changes.

Item #9. Adoption: Amendments to Regulations 18702.1, 18730, 18940.2, 18942.1, and 18943 - Biennial Gift Limit Adjustment.

There was no objection from the Commission to the adoption of the new gift limit amount as proposed by staff.

Item #10. Adoption: CalPERS Audit and Record Keeping Regulations.

There was no objection from the Commission to the adoption of Proposed Regulations 18453 and 18997.

Item #11. Approval of Regulation Calendar for the Year 2001.

Ms. Menchaca noted the addition of the item discussed under the "legally required participation."

There was no objection from the Commission to the approval of the Regulation Calendar for the Year 1001, with the addition of the item discussed by Ms. Menchaca.

Item #12. Approval of the 2000/01 Statement of Economic Interests (Form 700).

Commissioner Swanson stated that she liked the draft, but questioned whether it would include a statement giving filers a "short form" option, indicating that nothing had changed since the last time they filed.

Chairman Getman responded that next year's projects would include an overhaul of SEI issues, and that this would be considered at that time. She also noted that staff had a proposal for dealing with online filing of SEI's, and that would allow public officials to utilize their old form online and make any necessary changes.

There being no objection from the Commission, the Form 700 was approved.

Items #13, #14, #15, #16, #17, #18.

The Commission approved the following items on the consent calendar without objection:

Item #13. ***In the Matter of Dale Sare, Committee to Elect Dale L. Sare, Superior Court Judge and John N. Cefalu, Treasurer, FPPC No. 99/83.*** (4 counts).

Item #14. ***In the Matter of Citizens for a Better Fairfield, FPPC No. 99/724.*** (1 count.

Item #15. ***In the Matter of Alfred Testa Jr., FPPC No. 99/794. (Default Decision and Order).*** (1 count).

Item #16. ***In the Matter of David Dal Porto, #98/774.*** (1 count).

Item #17. ***In the Matter of Orange Coast Title Company, #99/378.*** (1 count).

Item #18. ***Failure to Timely File Late Contribution Reports – Streamlined Procedure.***

- **a.** ***In the Matter of Safeway, FPPC No. 2000-395.*** (2 counts).
- **b.** ***In the Matter of Oshman Living Trust, FPPC No. 2000-415.*** (1 count).
- **c.** ***In the Matter of Michelle & David Kelley, FPPC No. 2000-436.*** (1 count).
- **d.** ***In the Matter of California Republican Association, FPPC No. 2000-443.*** (2 counts).
- **e.** ***In the Matter of Daniel Rubin, FPPC No. 2000-453.*** (1 count).
- **f.** ***In the Matter of Quisenberry & Barbanel, LLP, FPPC No. 2000-457.*** (1 count).
- **g.** ***In the Matter of E. Blake Byrne, FPPC No. 2000-458.*** (1 count).
- **h.** ***In the Matter of Bank of America, FPPC No. 2000-505.*** (5 counts).
- **i.** ***In the Matter of Anza Borrego Foundation, FPPC No. 2000-507.*** (1 count).

Items #19, #20, #21.

The Commission took the following reports under advisement:

Item #19. Legislative Report.

Item #20. Litigation Report
Item #21. Executive Director's Report

The meeting was adjourned at 3:00.

Dated: December 8, 2000

Respectfully submitted,

_____
Sandra A. Johnson
Executive Secretary

Approved by:

_____
Chairman Getman